IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of DORENE M. BORRACCHINI, Respondent, and RICHARD LLEWELYN JONES, Appellant.	)	NO. 60494-5-I (Consolidated with Nos. 60495-3-I, 60497-0-I, and 60498-8-I) DIVISION ONE UNPUBLISHED OPINION
In the Matter of the Marriage of DIANA T. WOODRUFF-JONES, Respondent, and RICHARD LLEWELYN JONES, Appellant.	)	Filed: July 20, 2009
In the Matter of STATE OF WASHINGTON, ex rel., M.L.C., Child, Respondent, PATRICIA LEIGH COTTON,	)	

Respondent,

and

RICHARD LLEWELYN JONES,

Appellant.

RICHARD LLEWELYN JONES,

Appellant,

v.

STATE OF WASHINGTON, a sovereign entity; STATE OF WASHIONGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, a subdivision of the State of Washington; ROBIN ARNOLD WILLIAMS, as Secretary of the Washington State Department of Social & Health Services; SPENCER GRAF, as Support Enforcement Officer for the Washington State Department of Social & Health Services/Division of Child Support; and "JOHN DOES" and "JANE DOES" I through V,

Respondents.

Leach, J. — Richard Llewelyn Jones appeals the trial court's orders regarding back support in three child support cases and the order denying his petition for writ of mandamus. Jones claims that the trial court erred in calculating the amount of back support owed in each of his child support cases

and in placing the burden on him to prove payment of his support obligations. Jones also argues that his procedural due process rights under the Fifth and Fourteenth Amendments were violated when he was not given notice or an opportunity to challenge the State's back support calculations before his name was added to the State's certified list of persons owing more than $5,000 in back support, which resulted in the denial of his application to renew his passport. Although the trial court erred in calculating the amount of back support owed in one case, we hold that the trial court correctly placed the burden on Jones to prove payment of his support obligations and determined that Jones's total support obligation exceeded $5,000, so certification was proper. We further hold that Jones received adequate due process since predeprivation notice and hearing are not constitutionally required in the context of this case.

Background

1. Cotton and M.C.

From the time of her birth in July 1985 until April 1994, M.C. lived with her mother, Patricia Cotton; her father, Richard Jones, paid court-ordered support. In August 1995, Judge Marilyn Sellers granted Jones's petition to modify the existing parenting plan and support order, which established Jones as legal custodian of M.C. and ordered Cotton to pay support to Jones.

In April 1999, M.C. ran away from Jones's home, causing the Department

of Social and Health Services (DSHS) to file a dependency action. In August 1999, Judge Patricia Clark entered orders of dependency and disposition, to which Jones agreed, placing M.C. in foster care. The Clark orders provided that the foster care would be supervised by DSHS and that Jones "may be held financially responsible for the foster care costs." M.C. was returned to her mother in January 2001, where she remained until she reached the age of 18 in July 2003.

After M.C.'s placement in foster care, the Division of Child Support (DCS) initiated an action to establish Jones's support obligation. In June 2001, Commissioner Eric Watness entered a support order requiring Jones to pay $155 per month beginning April 2000 and $310 per month beginning October 2000. Jones appealed the Watness order, arguing that as M.C.'s legal custodian, he was not required to pay support for her.

During the pendency of this appeal, the State brought a contempt action against Jones seeking to recover back support under the Watness order. In June 2002, Judge John Erlick denied the State's contempt motion on grounds that the State presented insufficient information regarding the character of M.C.'s custody and payments being made by the State.

In June 2003, this court in State ex rel. M.L.C. v. Jones[1] affirmed the

[1] Noted at 117 Wn. App. 1037, 2003 WL 21500729, at *5. In light of

Watness order and held that Jones did not have legal custody of M.C. after August 1999 when the Clark orders were entered. The court explained that the Clark orders placed legal custody of M.C. in DSHS and thus suspended the custody and support provisions of the Sellers orders.[2] The court in M.L.C. further held that Jones was responsible for M.C.'s foster care expenses and for her support while she was under the jurisdiction of the dependency court.[3] The court rejected Jones's argument that he was entitled to an offset for the back support Cotton owed to him under the Sellers orders ruling that the State, not Cotton, was the true obligee of Jones's obligations for M.C.'s support.[4]

2. Borracchini and J.J.

J.J. was born in September 1986 during Jones's marriage to Dorene Borracchini. The marriage was dissolved in December 1990. Under the dissolution decree, Jones was ordered to pay directly to Borracchini $500 per month for the support of J.J., starting in July 1990. Jones made some payments directly to Borracchini and some to the King County Superior Court Registry. Jones's obligation was decreased to $400 per month in February 1992 and decreased again to $258.80 per month in September 1993. Jones's obligation

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M.L.C., we dismiss Jones's argument that he retained custody of M.C. under the Sellers order.

[2] M.L.C., noted at 117 Wn. App. 1037, 2003 WL 21500729, at *5-6.
[3] M.L.C., noted at 117 Wn. App. 1037, 2003 WL 21500729, at *6.
[4] M.L.C., noted at 117 Wn. App. 1037, 2003 WL 21500729, at *9.

ended in May 2005 when J.J. graduated from high school.

On May 15, 2007, Borracchini submitted a declaration stating her belief that Jones owed her "little or nothing in back child support . . . . [The Office of Support Enforcement] has failed to pay me the sums Petitioner has paid to them or explained to me why the monies paid by Petitioner were diverted." In June 2007, DCS closed Borracchini's case.

3. Woodruff and E.J.

E.J. was born in March 1993 during Jones's marriage to Diana Woodruff. In February 2003, Woodruff filed a petition for dissolution.[5] Commissioner Katharine Hershey entered a temporary support order in May 2003, ordering Jones to pay $1,009.40 per month beginning in May 2003 for E.J.'s support. Jones moved for revision, which Judge Mary Roberts granted in part in July 2003. The Roberts order modified aspects of the Hershey order by providing that E.J.'s day care and educational expenses would be paid by the parents directly to the providers: "The Child Support Worksheets should be revised to eliminate the $600.00 day care and $425.50 educational expense from the transfer payment since any day care and education expenses will be paid by the parties directly to the providers." The Roberts order required Jones to pay 48.1

[5] In re Marriage of Jones, noted at 123 Wn. App 1047, 2004 WL 2336085, at *1.

percent of day care and educational expenses actually incurred. Jones appealed both orders to this court.

While these appeals were pending, Woodruff filed a contempt action against Jones, seeking recovery of child support under the Hershey order. In February 2004, Commissioner Richard Gallagher found Jones not in contempt but concluded that he owed a total of $749.11 in back support, including his share of daycare and educational expenses actually incurred, for the period from May 1, 2003 through January 31, 2004. This amount was determined by eliminating day care and educational expenses from the $1,009.40 transfer payment in the Hershey order as revised by the Roberts order, leaving a monthly transfer payment of $516.13. The Gallagher order expressly addressed Jones's share of day care and educational expenses actually incurred during this period and included the amounts he had not paid in its judgment. No party appealed this order.

In May 2004, Judge Michael Fox entered the dissolution decree, support order, and findings of fact and conclusions of law. The Fox orders affirmed the Hershey order as revised by the Roberts order, stating that it remained in effect unless modified by Jones's appeal. Jones was also ordered to pay an additional $1,200 in back support from October 2002 through March 2003, the period preceding the effective date of the Hershey order. Jones was further ordered to

pay $647 per month starting in May 2004, increasing to $776 per month starting in March 2005 when E.J. turned 12.[6] Finally, Woodruff was awarded a judgment of $14,075.80 for expenses, including medical bills and real estate taxes, that Jones had failed to pay as required by the Hershey and Roberts orders.

In October 2004, this court in In re Marriage of Jones[7] affirmed the Hershey and Roberts orders. At the time of the Jones decision, Jones was also involved in contempt proceedings initiated by the State in June 2004. Although Commissioner Michael Bugni denied Jones's motion to dismiss, he granted Jones's motion for reconsideration in June 2005. The Bugni order stated that the back support the State was seeking was not child support and limited DCS's ability to seek support payments from Jones on the contempt calendar.[8]

4. Mandamus Proceedings

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[6] Paragraph 3.5 of the Fox support order states:

> The obligor parent's privileges to obtain or maintain a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle, may be denied, or may be suspended if the obligor parent is not in compliance with this support order as provided in chapter 74.20A Revised Code of Washington.

[7] Noted at 123 Wn. App. 1047, 2004 WL 2336085 at *2.

[8] Because the Bugni order only applies to DCS's ability to enforce Jones's support obligation on the contempt calendar, we reject Jones's argument that DCS cannot enforce his support obligations.

In May 2006, Jones applied to renew his passport. About one month later, he received a letter from the United States Department of State advising that his application was rejected because he owed child support in excess of $5,000. According to Jones, he did not receive any notice or have any opportunity to challenge the certification of his arrearage. Jones wrote to his support enforcement officer, Spencer Graf, on June 19, 2006, demanding that the State correct its records and remove his name from the certified list of persons owing more than $5,000 in back support. Graf informed Jones that he owed back support to Borracchini and Woodruff and refused to change the DCS records as requested. Graf also wrote a letter, dated June 29, 2006, restating the reasons for the passport denial and advising Jones that he still had "the option of having your concerns addressed using our conference board process."

In July 2006, Jones filed a petition for writ of mandamus in the Thurston County Superior Court, claiming a violation of his Fourteenth Amendment rights, and moved for summary judgment. The court denied his motion on grounds that it improperly requested relief on a claim that was not pleaded in his petition. The court further ruled that it could not determine whether DCS had certified the correct arrearage amount without construing the relevant King County orders. Therefore, the court ordered the transfer of Jones's mandamus action to the King County Superior Court.

In the King County Superior Court, Jones renewed his summary judgment motion. The court stayed the mandamus action until Jones's arrearage totals could be adjudicated in Jones's three family law actions. The court transferred the arrearage issue, as well as the mandamus action, to the King County unified family court.

In family court, DCS moved to limit discovery to the arrearage totals in Jones's family law actions. DCS also moved to establish that Jones had the burden of proving that he made the disputed support payments. The court granted both motions.[9] At trial, Graf testified as the State's primary witness, focusing on DCS's calculations of back support. Jones testified on his own behalf, focusing on his interpretation of the support orders and on his criticism of DCS's calculations. Jones called Borracchini, who testified that she was owed back support by either Jones or the State. Finally, DCS called Deputy Prosecuting Attorney Jackie Jeske to rebut Jones's testimony regarding contempt proceedings. The trial court held that DCS's back support calculations were correct and entered a judgment against Jones in each action. According to the trial court, Jones owed $10,250.63 to Cotton, $3,024.04 to Borracchini, and $13,145.82 to Woodruff. Because Jones's support obligations exceeded

[9] Jones assigns error to the order limiting discovery, but he fails to cite supporting authority and does not show that he was harmed by the discovery allowed by the superior court. Therefore, we do not address this argument.

$5,000, the court held that certification of Jones's arrearage was proper and denied his petition for writ of mandamus. The court declined to address the due process issue. Jones appealed the orders regarding back support as well as the order denying his petition for writ of mandamus. All four appeals were consolidated by this court.

Discussion

I. Orders Regarding Back Support

Jones assigns error to nearly all of the trial court's findings of facts and conclusions of law in the Cotton, Borracchini, and Woodruff back support orders.

Awards of child support are reviewed under an abuse of discretion standard.[10] Accordingly, we must determine whether the findings of fact are supported by substantial evidence and whether the trial court made any errors of law.[11] Substantial evidence exists when the record contains evidence of sufficient quantity "'to persuade a fair-minded, rational person of the truth of a declared premise.'"[12] This factual review is deferential and requires us to view the evidence in favor of the prevailing party.[13] "Under the substantial evidence

[10] In re Marriage of Wayt, 63 Wn. App. 510, 513, 820 P.2d 519 (1991) (citing In re Marriage of Griffin, 114 Wn.2d 772, 779, 791 P.2d 519 (1990)).
[11] In re Marriage of Stern, 68 Wn. App. 922, 929, 846 P.2d 1387 (1993).
[12] In re Marriage of Stern, 57 Wn. App. 707, 717, 789 P.2d 807 (1990) (quoting In re Snyder, 85 Wn.2d 182, 185-86, 532 P.2d 278 (1975)).
[13] Pilcher v. Dep't of Revenue, 112 Wn. App. 428, 435, 49 P.3d 947 (2002).

standard, we will not substitute our judgment for that of the fact finder. Instead, we accept the fact finder's views regarding the credibility of witnesses and the weight accorded to reasonable but competing inferences."[14] Conclusions of law derived from the findings are reviewed de novo.[15]

With respect to the Cotton and Borracchini back support orders, we reject Jones's contention that the trial court's findings of fact are not supported by substantial evidence. The challenged findings in both orders are either supported by undisputed evidence or amply supported by evidence favoring the State's position.[16] Significantly, Graf's trial testimony shows that Jones's dispute

[14] Isla Verde Int'l Holdings, Inc. v. City of Camas, 99 Wn. App. 127, 133-34, 990 P.2d 429 (1999) (citation omitted).

[15] Willener v. Sweeting, 107 Wn.2d 388, 394, 730 P.2d 45 (1986).

[16] State v. Black,100 Wn.2d 793, 802, 676 P.2d 963 (1984) ("Even where the evidence conflicts, a reviewing court must determine only whether the evidence most favorable to the prevailing party supports the challenged findings.").

with DCS's back support calculations stemmed from his misunderstanding of the federal distribution requirements governing the collection of child support.[17]

With respect to the Woodruff back support order, however, we agree with Jones that the trial court erred in calculating that he owed $13,145.82 in back support for E.J. The court's calculation is based on the flawed legal conclusions that (1) the Roberts order did not alter Jones's support obligation under the Hershey order, (2) Jones was liable under the Hershey order for $493.27 per month for day care and educational expenses when no evidence of the actual expenses was presented, and (3) the Gallagher order was superseded by this court's decision in Jones and the Fox support order. We first note that the

[17] For example, Jones argued that DCS's calculations erroneously showed that his balance for E.J. increased during a period he paid current support and that his balance for J.J. decreased even though he did not make any back support payments. But Jones fails to understand that support payments are distributed based on the date of receipt by DCS and that payments are applied to the obligor's current support obligations first. WAC 388-14A-5001(2) and (3). Thus, when DCS received two payments from Jones in the same month and no payments the next month, the first payment was applied to E.J.'s current support while the second was allocated proportionally to back support for E.J. and J.J.

Roberts order was affirmed in Jones[18] and in paragraph 3.20 of the Fox support order.[19] Accordingly, the Roberts order reduced Jones's monthly transfer payment under the Hershey order from $1009.40 to $516.13 by eliminating the $600.00 day care and $425.50 educational expenses from the support calculation and imposing liability upon Jones for 48.1 percent of these expenses actually incurred. We further note that no evidence of actual day care or educational expenses for E.J. was presented to the trial court. The trial court therefore had no evidence to support a finding that Jones owed any sum for day

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[18] In Jones, the court stated:

> It is true that [paragraph 6 of the Roberts order] will affect the calculations on the child support worksheet and ostensibly decrease [Jones's] monthly support transfer payment. But the record is unclear as to whether the trial court, in its final orders, made the appropriate modifications. . . .We thus assume that the trial court, in its final orders, adjusted the child support payments accordingly. [Jones] has failed to demonstrate that it did not.

2004 WL 2336085, at *2.

[19] Paragraph 3.20 of the Fox support order provides:

> Back child support that may be owed under the 5/9/03 support order [the Hershey order], as revised on obligor's prior motions for reconsideration and revision of that order, is affirmed and is not affected by this order. The obligor has an appeal pending to the Washington Court of Appeals on the 5/9/03 order. The 5/9/03 order has not been stayed pending that appeal. The 5/9/03 order continues in effect unless stayed or modified by the appellate court.

(Emphasis added.)

care or educational expenses under the Hershey order after January 31, 2004, the period not addressed in the Gallagher order. Finally, the Gallagher order was not superseded since it was not appealed by the State and was preserved in paragraph 2.11 of the Fox findings of fact and conclusions of law.[20] Therefore, the Gallagher order determination that Jones owed $749.11 for E.J.'s support from May 2003 to January 2004 was not subject to relitigation.

Using DCS's payment records and the correct monthly transfer payment amount for each month, Jones owed Woodruff $7,433.39 for E.J.'s support through July 2007.[21] The judgment against Jones for support arrearages in the Woodruff case should be reduced to this amount.

II. Burden of Proof

Jones next argues that the trial court erred in placing the burden on him to prove disputed child support payments. But our courts have established that where indebtedness has been established, the burden of proving payment is on

[20] Paragraph 2.11 of the Fox findings of fact and conclusions of law states, "The child support portion of the 2/6/04 judgment [the Gallagher order] is not extinguished by law by entry of the final child support order and need not be restated in the final support order nor should this judgment be restated in the Decree."

[21] The sum of $749.11 under the Gallagher order, $1,200 past support under the Fox support order, $28.51 for February 2004 through April 2004 (Jones owed $1,548.39 and paid $1,519.88), $2,695.76 for May 2004 through February 2005 (Jones owed $6,470.00 and paid $3,774.24), and $2,760.01 for March 2005 through July 2007 (Jones owed $22,504.00 and paid $19,743.99).

the party alleging that payment has been made. In Martin v. Martin,[22] our Supreme Court held that the burden of proving disputed back support lay with the obligor father: "The total obligation of the father, in this case, is a matter of simple calculation. The defense is payment, and the burden of proof of payment rests upon him and he must assume the risk of any failure by reason of indefiniteness." Thus, Jones has the burden of affirmatively proving that he paid support.

Jones has not met this burden. At several points during the trial, Jones conceded that he did not understand DCS's records. When asked if there were any payments he had made that were not reflected in DCS's records, Jones stated, "I have no idea" and that "I have no way of knowing." Jones also admitted that his own records were inaccurate. Rather than establishing proof of payment, Jones focused on perceived discrepancies he found with DCS's records, which were ultimately resolved by Graf's testimony. Jones also challenged the admission of DCS's records. But the trial court properly admitted the records after considering Graf's testimony that these records were printouts of electronic records created and maintained in the ordinary course of business when DCS registry staff processed payment information and that he routinely relied on these records as a support enforcement officer.[23] Thus, the trial court

[22] 59 Wn.2d 468, 472-73, 368 P.2d 170 (1962).

properly placed the burden on Jones to prove payment of child support, which he failed to establish.

III. Due Process

The Department of State denied Jones' passport application under 42 U.S.C. § 652(k). Under this provision, a state agency certifies that an individual owes more than $5,000 in arrearages of child support to the Department of Health and Human Services (DHHS).[24] The secretary of DHHS then submits the certification to the Department of State.[25] Upon receiving the certification, "[t]he Secretary of State shall . . . refuse to issue a passport to such individual, and may revoke, restrict, or limit a passport issued previously to such individual."[26]

Jones claims a violation of his procedural due process rights under the Fifth and Fourteenth Amendments.[27] Specifically, he argues that the State deprived him of due process by failing to give him notice and an opportunity to be heard before certifying his arrearage to DHHS.

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[23] See State v. Garrett, 76 Wn. App.719, 723-25, 887 P.2d 488 (1995) (holding that medical records were properly admitted through physician who routinely relied on records prepared by other physicians in the ordinary course of business).

[24] The threshold amount for triggering passport denial was lowered to $2,500 effective October 1, 2006. Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7303(b), 102 Stat. 4, 145 (2006).

[25] 42 U.S.C. § 652(k)(1).

[26] 42 U.S.C. § 652(k)(2).

[27] We need not address the State's argument that Jones did not meet notice pleading requirements since his due process claim fails on the merits.

The Fifth Amendment, made applicable to states through the Fourteenth Amendment, provides that no state shall "deprive any person of life, liberty, or property, without due process of law." To establish a procedural due process claim, Jones must prove a deprivation of a protectable liberty or property interest and a denial of adequate procedural protections.[28] The parties agree that Jones has a protectable liberty interest in international travel that cannot be exercised without a passport, but they disagree as to whether Jones received adequate procedural protections before he was deprived of a passport renewal.

Jones asserts that "in the context of passport denial . . . notice and opportunity for a hearing must come before any action is taken on the passport." But this blanket assertion that predeprivation notice and hearing are constitutionally required in the passport denial context ignores that due process "'unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.'"[29] "[D]ue process is flexible and calls for such procedural protections as the particular situation demands."[30] In Mathews v. Eldridge,[31] the United States Supreme Court emphasized these

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[28] Foss v. Nat'l Marine Fisheries Serv., 161 F.3d 584, 588 (9th Cir.1998).

[29] Cafeteria & Rest. Workers Union, Local 473 v. McElroy, 367 U.S. 886, 895, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961) (quoting Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 162, 71 S. Ct. 624, 95 L. Ed. 817 (1951) (Frankfurter, J., concurring)).

[30] Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

principles in fashioning a balancing test for determining what procedural protections due process requires in a particular situation.[32] Thus, to determine whether Jones received adequate due process under the particular circumstances of this case, we consider the three distinct factors identified in Mathews:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[33]

We first examine the private interests involved. The private interest affected here is the child support obligor's interest in the possession of a passport, which relates to the obligor's protected liberty interest in international travel.[34] Unlike the interest in interstate travel, the interest in international travel has not been deemed a fundamental right but is considered to be "no more than

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[31] 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

[32] See Duranceau v. Wallace, 743 F.2d 709, 712 (9th Cir. 1984) (applying the Mathews test in deciding whether Washington's child support garnishment statute, which did not provide for a post-garnishment administrative hearing, satisfied due process); see also Guardianship Estate of Keffler v. Dep't of Soc. & Health Servs., 151 Wn.2d 331, 343-45, 88 P.3d 949 (2004) (employing the Mathews test to determine whether notice sent by the Social Security Administration before appointment of a representative payee met due process).

[33] Mathews, 424 U.S. at 335.

[34] See Califano v. Aznavorian, 439 U.S. 170, 175-76, 99 S. Ct. 471, 58 L. Ed. 2d 435 (1978).

an aspect of the 'liberty' protected by the Due Process Clause of the Fifth Amendment . . . [that] can be regulated within the bounds of due process."[35] When placed in the context of child support, the obligor's interest in international travel is less compelling than the obligee's interest in the enforcement of a child support order. As stated by the Ninth Circuit in Eunique v. Powell,[36] the passport denial statute expresses the legislature's intent to place the obligee's interest in support payments above the obligor's interest in international travel. By enacting 42 U.S.C. § 652(k), "Congress has decreed that [an obligor's] duties to her children must take precedence over her international travel plans. It has ordered her priorities for her."[37] The Ninth Circuit pointed out that the economic problems caused by nonpayment of child support are

> exacerbated when the non-paying parent is out of the state, as, of course, a parent traveling internationally must be. Indeed, even within the United States itself, the problem is serious. . . . [I]nternational travel by what our society often calls 'deadbeat parents' presents even more difficulties because the United States cannot easily reach them once they have left the country.[38]

Therefore, "if a parent . . . truly wishes to partake of the joys and benefits of

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[35] Califano v. Torres, 435 U.S. 1, 5 n.6, 98 S. Ct. 906, 908, 55 L. Ed. 2d 65 (1978) (citing Kent v. Dulles, 357 U.S. 116, 125, 78 S. Ct. 1113, 1118, 2 L. Ed. 2d 1204 (1958) and Aptheker v. Secretary of State, 378 U.S. 500, 505-06, 84 S. Ct. 1659, 1663, 12 L. Ed. 2d 992 (1964)).

[36] 302 F.3d 971, 975 (9th Cir. 2002).

[37] Eunique, 302 F.3d at 976.

[38] Eunique, 302 F.3d at 974.

international travel, § 652(k) [has] the effect of focusing that person's mind on a more important concern—the need to support one's children first."[39] The obligee's interest in child support is paramount to the obligor's interest in international travel.

Second, we consider the risk of erroneous deprivation and the probable value, if any, of additional or substitute safeguards. Generally, the original obligation of an individual to pay child support derives from a final court order. The process of calculating past due child support under this order involves few sources of error: computational mistakes, clerical errors, or failures to take account of the defenses that the individual can raise through the conference board process.[40] Although this process is not free from error, "procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases, not the rare exceptions."[41] Moreover, disputes regarding the calculation of back support may be brought before a conference board at any time.[42] The availability of the conference board process

[39] Eunique, 302 F.3d at 975.

[40] See Duranceau, 743 F.2d at 712; see also Jahn v. Regan, 584 F. Supp. 399, 415 (E.D. Mich. 1984) (stating that "since the amount of arrearage is simply a matter of record-keeping there is very little risk of error which would require a preseizure hearing").

[41] Mathews, 424 U.S. at 344.

[42] Under 45 C.F.R. § 303.35(a), states must have in place "an administrative complaint procedure . . . to allow individuals the opportunity to request an administrative review" to correct any errors made by the state child

renders additional safeguards unnecessary.[43]

Third, we examine the government's interests, which, in this case, are compelling. Indeed, "[i]t is hard to imagine a more compelling state interest than the support of its children."[44] As stated above, the passport denial statute promotes this interest by directing the obligor's resources towards child support. The statute also protects taxpayers since "unsupported children must often look to the public fisc, including the federal treasury, for financial sustenance."[45] Another compelling State interest is the effective enforcement of judgments: "Any rule that requires hearings after judgment diminishes the value of judgments and threatens to turn litigation into an endless round of procedures with no possibility of vindication or ultimate success."[46] Under the Mathews three-part balancing test, the State did not violate Jones's due process rights under the federal constitution when it did not provide notice and hearing before

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support enforcement agencies. 45 C.F.R § 303.35(b) clarifies that states "need not establish a formal hearing process but must have clear procedures in place." In compliance with this provision, WAC 388-14A-6400(1) establishes a conference board, which "is an informal review of case actions and of the circumstances of the parties and children related to a child support case."

[43] See Risenhoover v. Washington County Cmty. Servs., 545 F. Supp. 2d 885, 890 (D. Minn. 2008) (holding the certification of petitioner's child support arrearage to DHHS without notice and hearing was proper on grounds that "the availability of a post-certification administrative complaint procedure [under 45 C.F.R. § 303.35(a)] provides Petitioner with adequate procedural due process").

[44] Duranceau, 743 F.2d at 711.

[45] Eunique, 302 F.3d at 975.

[46] Duranceau, 743 F.2d at 712.

placing him on the certified list.[47]

Notably, Jones fails to provide any analysis under the Mathews factors to support his position. He nonetheless maintains that the Second Circuit's decision in Weinstein v. Albright[48] establishes that he is entitled to predeprivation notice and hearing. In that case, Weinstein argued that he was denied due process because he was not provided any opportunity to contest the denial of his passport application under 42 U.S.C. § 652(k) before a federal agency.[49] In rejecting this argument, the Second Circuit stated that review before the relevant state agency was sufficient, reasoning that "the statutes and regulations comport with due process because they require that persons . . . be provided . . . with notice and an opportunity to be heard before a passport is denied or revoked based on arrearages in child support payments."[50] Thus, Weinstein only states that the statutory scheme for passport denial provides adequate due process; it does not establish what minimum due process is required before passport deprivation occurs. In this case, Jones's due process claim rests solely on his contention that he is entitled to predeprivation notice

[47] See Jarmon v. Comm'r of Soc. Servs., 47 Conn. Supp. 492, 807 A.2d 1109 (Conn. Super. Ct. 2002) (holding that predeprivation notice and hearing were not required before the State's placement of a withholding order on a child support obligor's assets).

[48] 261 F.3d 127 (2d Cir. 2001).

[49] Weinstein, 261 F.3d at 134.

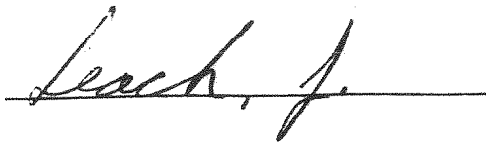
[50] Weinstein, 261 F.3d at 135 (quotations omitted).

and hearing under the Fifth and Fourteenth Amendments. Because Weinstein does not address whether predeprivation notice and hearing are constitutionally required, Jones's reliance on Weinstein is misplaced. The other cases cited by Jones are similarly inapplicable. Jones's procedural due process claim fails.

Conclusion

Although the trial court erred in calculating the amount of back support owed in the Woodruff case, this error does not alter the court's conclusion that Jones's support obligations exceeded $5,000. In addition, Jones received adequate due process because predeprivation notice and hearing are not constitutionally required under the Mathews three-part balancing test. Therefore, certification of Jones's arrearage to DHHS was proper. The trial court's determination of the back support owed Woodruff is reversed and its judgment is

otherwise affirmed. The Woodruff case is remanded for entry of a judgment for back support consistent with this opinion.



WE CONCUR: